



*California's protection and advocacy system*

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## **RESPITE<sup>1</sup>**

These changes are included in the Budget Trailer Bill. They will be effective when the Budget is approved, unless the language is changed by the legislature.

Respite provides a chance for caregivers to take a break from caring for a consumer. The Lanterman Act currently requires respite to be provided as identified in the IPP according to you and your family's needs. The changes to the Lanterman Act provide new standards that limit how much respite a regional center may purchase and when respite may be provided. There are exceptions to these standards.

### **How the Law Changed**

The amount and circumstances under which respite services may be purchased for you and your family has changed as follows. There is also an exemption to these rules (see below).

#### **New Standards for Providing Respite**

1. Respite hours will only be awarded when the consumer requires more care and supervision than a person of the same age without developmental disabilities.

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<sup>1</sup> The changes are part of the Budget Trailer Bill AB x3 45.

You may find the law at [http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_0001-0050/abx3\\_45\\_bill\\_20090628\\_amended\\_asm\\_v98.html](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/abx3_45_bill_20090628_amended_asm_v98.html)

The changes affecting Respite are found in Welfare & Institutions Code, Section 4686.5(a).

2. Out of home respite will be limited to 21 days per year. In home respite will be limited to 90 hours per quarter (this equals 30 hours per month).
3. Regional centers cannot purchase day care services to replace respite. Day care services are regular care provided in the parent's home while the parent works or goes to school.

If you are already receiving respite, these changes will not apply until August 1, 2009. If you are not receiving respite currently, then the changes are effective July 1, 2009. These changes remain in effect only until DDS determines that the individual choice budget process has been implemented. (See fact sheet about Individual Choice Budget).

## **Exemption**

A regional center may make an exemption (exception) to the respite criteria under the following circumstances. A request for an exemption should be considered by an IPP team.

1. The intensity of the consumer's care and supervision needs are such that additional respite is necessary to keep the consumer living at home.
2. There is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.<sup>2</sup>

## **IHSS and Respite Are Not the Same**

The changes to the law say regional centers can only consider In Home Supportive Services (IHSS) as a generic resource when the approved IHSS meets the respite need in a consumer's IPP or IFSP. IHSS and respite are usually different services that accomplish different things. IHSS is a service that the county provides when the county pays someone to care for some of a consumer's care needs. The county does not expect the IHSS worker to meet all of your needs while the worker is there.

Respite is a regional center funded service to allow the care provider a break from caring for a consumer. The regional center does expect the

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<sup>2</sup> There are detailed rules about this exemption. The rules may be found at Welfare & Institutions Code, Section 4686.5 (a)(3).

respite worker to meet all of your needs while the worker is with you. Your respite should not be reduced simply because your IHSS provider lives with you.

## **What Should I Do If the Regional Center Wants to Change My Respite Services?**

If your regional center wants to change your respite services, it must hold an IPP meeting.<sup>3</sup> At the meeting, the IPP team must discuss the new respite criteria and whether the exemption applies to you. For example, you should discuss if the consumer's care and supervision needs are greater than those of an individual without a developmental disability. You should also discuss the amount of respite you need. If you need more respite than the cap, the IPP team should discuss whether you need more respite to remain at home or any extraordinary event in your family that makes it difficult for the family member to provide respite.

If after the IPP meeting, you do not agree with the proposed change, the regional center must give you a written notice of its decision to change your respite service. The notice must be given 30 days before the change begins.<sup>4</sup>

If you want to continue to receive the services, you must request a fair hearing. If you want to continue to receive your current services, you must request a hearing within 10 days of receiving the notice.<sup>5</sup> Otherwise, the request must be made within 30 days.<sup>6</sup> Your appeal should indicate why you need additional hours up to the limit, and/or why you think you qualify for an exemption.

For more important information on how to appeal decisions by the regional center, read our fact sheet, Due Process and Hearing Rights.

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<sup>3</sup> See Welfare & Institutions Code Section 4646.4 (a) (b).

<sup>4</sup> See Welfare & Institutions Code Section 4710.

<sup>5</sup> See Welfare & Institutions Code Section 4715.

<sup>6</sup> See Welfare & Institutions Code Section 4710.5 (a)